

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY SPENCER and KATHRYN E. TETZ,

Plaintiffs,

V.

No. 11-5424 BHS

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY JAMES M.
PETERS, DETECTIVE SHARON KRAUSE,
SERGEANT MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE COUNTY
OF CLARK and JOHN DOES ONE through TEN,

Defendants.

ANSWER OF DEFENDANTS
SHARON KRAUSE, MICHAEL
DAVIDSON, CLARK COUNTY
PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE AND
CLARK COUNTY

COME NOW, the Defendants, Sharon Krause, Michael Davidson, Clark County Prosecutor's Office, Clark County Sheriff's Office and Clark County, by and through their attorney of record, E. Bronson Potter, and, in answer to the complaint filed herein, state as follows:

1. In answer to paragraph 1 of the complaint, these Defendants state that Paragraph No. 1 is a characterization of the Plaintiffs' lawsuit and requires no response.

ANSWER OF DEFENDANTS SHARON KRAUSE, MICHAEL DAVIDSON, CLARK COUNTY PROSECUTOR'S OFFICE, CLARK COUNTY SHERIFF AND CLARK COUNTY - 1

CLARK COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
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2. In answer to paragraph 2 of the complaint, these Defendants admit that certain
3 parties are citizens of differing states.

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3. In answer to paragraph 3 of the complaint, these Defendants admit that the court
5 has subject matter jurisdiction over the Plaintiffs' federal claims but, otherwise, denies the
6 remaining allegations of Paragraph No. 3 of the complaint.

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4. In answer to paragraph 4 of the complaint, these Defendants admit that venue is
8 proper.

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5. In answer to paragraph 5 of the complaint, these Defendants state that Paragraph
10 No. 5 consists of legal conclusions which do not require a response or, to the extent that they do,
11 they are denied. Otherwise, these Defendants allege that some or all of the Plaintiffs' claims are
12 barred by the statute of limitations.

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14 6-8. In answer to paragraphs 6-8 of the complaint, these Defendants are without
15 sufficient knowledge to admit or deny the allegations contained in Paragraph Nos. 6 - 8 of the
16 complaint and, therefore, they are denied.

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18 9. In answer to paragraph 9 of the complaint, these Defendants admit that Clark
19 County is a political subdivision of the State of Washington.

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10. In answer to paragraph 10 of the complaint, these Defendants admit that in 1984-
21 1985, James Peters was a deputy prosecuting attorney working within the Clark County
22 Prosecuting Attorney's Office. Otherwise, these Defendants are without knowledge to admit or
23 deny the remaining allegations contained in Paragraph No. 10 and, therefore, deny the same.

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25 11. In answer to paragraph 11 of the complaint, these Defendants state that the Office
26 of the Prosecuting Attorney is established pursuant to the Constitution of the State of
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1 Washington, Article XI, §§ 4 and 5, and Chapter 36.27, RCW. Otherwise, see Paragraph 10 of
2 this answer. The remaining allegations of Paragraph No. 11 of the complaint are denied.

3 12. In answer to paragraph 12 of the complaint, Defendant Krause admits that she is a
4 citizen of the State of Arizona and currently residing in Mohave County. Further, she admits that
5 in 1984-1985, she was a deputy sheriff in the Clark County Sheriff's Office. She further admits
6 that she was involved in the investigation of Mr. Spencer.

7 13. In answer to paragraph 13 of the complaint, these Defendants state that the
8 allegations contained in Paragraph No. 13 are not directed to these Defendants and, therefore, no
9 response is made to it.

10 14. In answer to paragraph 14 of the complaint, these Defendants state that the Office
11 of County Sheriff is established pursuant to the Constitution of the State of Washington, Article
12 XI, §§ 4 and 5, and in reference to Chapter 36.28, RCW.

13 15. In answer to paragraph 15 of the complaint, these Defendants state that the
14 allegations in Paragraph No. 15 are not directed to any of these Defendants and, therefore, they
15 are not responded to.

16 16. In answer to paragraph 16 of the complaint, these Defendants state that they are
17 without knowledge to admit or deny the remaining allegations contained in Paragraph No. 16
18 and, therefore, deny the same.

19 17-288. In answer to Paragraphs Nos. 17 – 288, "Allegations of Fact", of the complaint,
20 these Defendants state as follows. The complaint violates Fed. R. Civ. P. 8(a), in that it does not
21 consist of a "short and plain statement" of the claims against the Defendants. These Defendants
22 deny that they individually or collectively engaged in a malicious investigation, prosecution or
23 detention of Mr. Spencer, or did so without probable cause. Otherwise, these Defendants rely on
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1 the averments of this answer and deny the allegations of Paragraph Nos. 17 – 288 of the
2 complaint.

3 289. In answer to paragraph 289 of the complaint, these Defendants reallege the
4 matters set forth above in this answer.

5 290. In answer to paragraph 290 of the complaint, these Defendants admit that the
6 investigation and prosecution of Mr. Spencer was undertaken under state law. Otherwise, the
7 Plaintiffs' allegations related to personal relationships and conspiracies would not be matters
8 undertaken under color of state law.

9 291-298. In answer to paragraphs 291-298 of the complaint, these Defendants deny the
10 allegations thereof.

11 299. In answer to paragraph 299 of the complaint, these Defendants reallege the
12 matters set forth above in this answer.

13 300-308. In answer to paragraphs 300-308 of the complaint, these Defendants deny the
14 allegations thereof.

15 309. In answer to paragraph 309 of the complaint, these Defendants reallege the
16 matters set forth above in this answer.

17 310. In answer to paragraph 310 of the complaint, these Defendants reallege the
18 matters set forth above in this answer. These Defendants admit that the investigation and
19 prosecution of Mr. Spencer was conducted under the color of state law. Otherwise, to the extent
20 that the complaint alleges that such actions were undertaken as a conspiracy to intentionally
21 deprive Mr. Spencer of his constitutional rights, the allegations of Paragraph No. 310 are denied.

22 311-318. In answer to paragraphs 311-318 of the complaint, these Defendants deny the
23 allegations thereof.

1 319. In answer to paragraph 319 of the complaint, these Defendants reallege the
2 matters set forth above in this answer.

3 320. In answer to paragraph 320 of the complaint, these Defendants reallege the
4 matters set forth in Paragraph No. 310 of this answer.

5 321-325. In answer to paragraphs 321-325 of the complaint, these Defendants deny the
6 allegations thereof.

7 326. In answer to paragraph 326 of the complaint, these Defendants reallege the
8 matters set forth above in this answer.

9 327. In answer to paragraph 327 of the complaint, these Defendants reallege the
10 matters set forth in Paragraph No. 310 of this answer.

11 328-333. In answer to paragraphs 328-333 of the complaint, these Defendants deny the
12 allegations thereof.

13 334. In answer to paragraph 334 of the complaint, these Defendants reallege the
14 matters set forth above in this answer.

15 335. In answer to paragraph 335 of the complaint, these Defendants reallege the
16 matters set forth in Paragraph No. 310 of this answer.

17 336-340. In answer to paragraphs 336-340 of the complaint, these Defendants deny the
18 allegations thereof.

19 341. In answer to paragraph 341 of the complaint, these Defendants reallege the
20 matters set forth above in this answer.

21 342. In answer to paragraph 342 of the complaint, these Defendants reallege the
22 matters set forth in Paragraph No. 310 of this answer.

1 343-349. In answer to paragraphs 343-349 of the complaint, these Defendants deny the
2 allegations thereof.

3 350. In answer to paragraph 350 of the complaint, these Defendants reallege the
4 matters set in this answer.

5 351. In answer to paragraph 351 of the complaint, these Defendants reallege the
6 matters set forth in paragraph 310 of this answer.

7 352-359. In answer to paragraphs 352-359 of the complaint, these Defendants deny the
8 allegations thereof.

9 360. In answer to paragraph 360 of the complaint, these Defendants reallege the
10 matters set forth above in this answer.

11 361. In answer to paragraph 361 of the complaint, these Defendants reallege the
12 matters set forth in Paragraph No. 310 of this answer.

13 362-365. In answer to paragraphs 362-365 of the complaint, these Defendants deny the
14 allegations thereof.

15 366. In answer to paragraph 366 of the complaint, these Defendants reallege the
16 matters set forth above in this answer.

17 367. In answer to paragraph 367 of the complaint, these Defendants reallege the
18 matters set forth in Paragraph No. 310 of this answer.

19 368-372. In answer to paragraphs 368-372 of the complaint, these Defendants deny the
20 allegations thereof.

21 373. In answer to paragraph 372 of the complaint, these Defendants reallege the
22 matters set forth above in this answer.

1 374. In answer to paragraph 374 of the complaint, these Defendants reallege the
2 matters set forth in Paragraph No. 310 of this answer.

3 375-382. In answer to paragraphs 375-382 of the complaint, these Defendants deny the
4 allegations thereof.

5 383. In answer to paragraph 383 of the complaint, these Defendants reallege the
6 matters set forth above in this answer.

7 384. In answer to paragraph 384 of the complaint, these Defendants reallege the
8 matters set forth in Paragraph 310 of this answer.

9 385. In answer to paragraph 385 of the complaint, these Defendants are without
10 knowledge to admit or deny the remaining allegations contained therein and, therefore, deny the
11 same.

12 386-387. In answer to paragraphs 386-387 of the complaint, these Defendants deny the
13 allegations thereof.

14 388. In answer to paragraph 388 of the complaint, these Defendants reallege the
15 matters set forth above in this answer.

16 389. In answer to paragraph 389 of the complaint, these Defendants reallege the
17 matters set forth in Paragraph 310 of this answer.

18 390. In answer to paragraph 390 of the complaint, these Defendants are without
19 knowledge to admit or deny the remaining allegations contained in therein and, therefore, deny
20 the same.

21 391-394. In answer to paragraphs 391-394 of the complaint, these Defendants deny the
22 allegations thereof.

1 BY WAY OF FURTHER ANSWER, these Defendants state as follows:
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3 395. These Defendants are entitled to absolute immunity for all actions related to the
4 prosecution of Mr. Spencer.
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6 396. These Defendants are entitled to qualified immunity for all actions related to the
7 prosecution of Mr. Spencer.
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9 397. These Defendants are entitled to qualified immunity for the discretionary actions
10 undertaken by them in good faith.
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12 398. The Plaintiffs' claims are barred by the doctrines of res judicata, collateral
13 estoppel and judicial estoppel.
14

15 399. Some or all of the Plaintiffs' claims are barred by the statute of limitations.
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17 400. Some or all of the Plaintiffs' claims are barred by the doctrine of laches.
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19 401. Neither the Clark County Prosecutor's Office nor the Clark County Sheriff's
20 Office are entities subject to suit.
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22 402. The Plaintiffs caused or contributed to their own damages, if any.
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24 403. The summons and complaint were not properly served upon the Defendant Clark
25 County.
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27 404. The Plaintiffs failed to properly file a claim against these Defendants for their
28 state law claims, as required by Chapter 4.96, RCW and therefore those claims are barred.
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405. To the extent that the Plaintiffs' injuries and damages, if any, were caused by the
intentional conduct of another party, those damages must be segregated from the damages caused
by fault.

406. The injuries and damages, if any, claimed by the Plaintiff Clyde Ray Spencer,
arise out of a condition to which he had knowledge and voluntarily subjected himself.

1 407. The investigation, arrest and prosecution of Clyde Ray Spencer were undertaken
2 with probable cause and were lawful.

3 408. The Plaintiffs' damages, if any, were caused by the Plaintiffs' failure to mitigate
4 said damages.

5 409. The conduct of these Defendants was privileged and not tortious.

6 410. The Plaintiffs' damages, if any, were caused by the acts or omission of third
7 parties over whom these Defendants had no control.

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10 DATED this 25th day of October, 2011.

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12
13 /s/ E. Bronson Potter

14 E. Bronson Potter, WSBA #9102
15 Chief Civil Deputy Prosecuting Attorney
16 Of Attorneys for Defendants Clark County, Clark County
17 Prosecutor's Office, Clark County Sheriff's Office,
18 Detective Sharon Krause and Sergeant Michael Davidson
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2011, I presented the preceding *Answer of Defendants Sharon Krause, Michael Davidson, Clark County Prosecutor's Office, Clark County Sheriff's Office and Clark County* to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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DATED this 25th day of October, 2011.

/s/ Thelma Kremer

Thelma Kremer, Legal Secretary